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THE ANDHRA PRADESH GAZETTE
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W.No.16

AMARAVATI, MONDAY, APRIL 22, 2024

G.51

PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

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NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

**ADDITIONAL CIVIL JUDGE'S COURT (SENIOR DIVISION)
TENALI.**

Tuesday, this the 12th day of March, 2024

I. P. No. 40 of 2022

Between:

Kanneganti Suseela Devi, W/o.Pitchaiah, aged about 64 years, Hindu,
Housewife, R/o.# 1-24-2/2, Nallapativari Street, Nazarpet, Tenali, Guntur
District.

....**Petitioner**

And

1. Kota Venkateswara Rao, S/o.Kota Sambaiah, aged about 62 years, Hindu,
Business, R/o.# D.No.5-184, Burripalem Post, Tenali Mandal, Guntur District-
522301.

2. Kota Siva Naga Malleswari, W/o.Kota Venkateswara Rao, aged about 56
years, Hindu, House wife, R/o.# D.No.5-184, Burripalem Post, Tenali Mandal,
Guntur District-522301.

....**Respondents**

This petition came before me on 06.03.2024 for hearing in the presence of Sri V.H.V.K.Kishore and Smt. K.Sharmila Renu garu, Advocates for the petitioner and Sri M.Venugopala Rao garu, Advocate for the respondent No.1 and 2 and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

:: ORDER ::

1. This petition is filed by the petitioner under Section 6 and 9 of the Provincial Insolvency Act to a) declare the 1st respondent as an insolvent b) to vest the petition schedule property with the official receiver for administration and distribution among general body of the creditors of the 1st respondent c) to direct the official receiver to apply under Section 53 and 54 of Provincial Insolvency Act after the 1st respondent is adjudicated as an insolvent and set aside the alienation dated 18.01.2022 in respect of petition schedule property before the insolvency court and costs of the petition.

The case of the petitioner and the respondent in a narrow compass which is as follows:

2. That the petitioner, by name Kanneganti Suseela Devi states in the petition that she lent an amount of Rs.1,00,000/- to R1 on 22.07.2019 and an amount of Rs.1,00,000/- on 14.08.2019. Evidencing the payment, he executed a promissory notes on the aforementioned dates. Inspite of several requests, R1 did not choose to pay the amounts. She came to learn that the first respondent executed a registered gift deed dated 18.01.2022 in favour of the 2nd respondent, who is his wife in order to avoid his debt. Therefore, the petition be allowed.

3. Refuting the averments made in the petition, the 1st respondent filed counter and the same is adopted by the 2nd respondent *mutatis and mutandis*, and the 1st respondent *interalia* maintains that he executed a gift deed in favour of his wife on 18.01.2022. He paid back the entire amount covered under the promissory notes, however, the petitioner fabricated the promissory notes and framed a false case against him. There is no collusion in between him and the 2nd respondent. Therefore, this petition be dismissed.

4. Basing on the above factual score the following debatable point that germane for consideration is :

1) Whether the 1st respondent committed an act of insolvency and thus, she is declared as an insolvent ?

2) Whether the petition schedule property can be given to the custody of the Officer Receiver, Guntur for administration ?

3) Whether the alienation covered under the gift deed dated 18.01.2022 is liable to be set aside ?

4) To what relief ?

5. That the petitioner, Smt. Kanneganti Susheela Devi filed proof affidavit in lieu of chief examination and reiterated by and large all the averments made in the petition, and in order to buttress her contention got herself examined as P.W.1, and examined PW2 and PW3 and got Ex.P1 to P6 marked. The 1st respondent in order to fortify his contention filed proof affidavit and got himself examined as RW1 and no documents were marked. R2 did not enter into the witness box nor got marked any document.

6. On the aforementioned evidential backdrop, it is the larger contention of the learned counsel for the petitioner, Smt K.Sharmila Renu garu that when the 1st respondent was badly tied with the finance, PW.1 extended her helping hand by parting with the amount covered under Ex.P1 and Ex.P2 promissory notes dated 22.07.2019 and 14.08.2019 respectively in order to bail him out from the financial exigencies, however the 1st respondent has no amount of goodness and made PW.1 to land in litigation. The mindset of R1 is the criminal mind set and he entertained criminal desire in order to avoid the debt, and in order to materialize his intention, he executed the gift deed covered under Ex.P3 in favour of R2 who is his wife. R1 did not assign any cogent and convincing reason as to why he alienated the property in favour of his wife in hurried manner. PW1 to 3 withstood the test of cross examination without loosing the credibility. Therefore, giving stamp of approval to the case of the petitioner is sustainable in law.

7. Resisting the arguments, it is vehemently canvased by the learned counsel for the respondents No.1 and 2, Sri M.Venugopal Rao garu that the petitioner is highly wicked person and obtained blank promissory notes from the 1st respondent as a collateral security in connection with the monetary deal. In fact, the 1st respondent paid back the entire amount covered under the promissory notes except the accrued interest. In that connection, the disputes cropped up in between PW1 and 1st respondent. The 2nd respondent is no other than his wife and he gifted the petition schedule property in favour of his wife on 18.01.2022 covered under Ex.P3. The 1st respondent has got some other properties, but the petitioner did not show it in the petition purposefully. The petitioner filed this petition with a malicious design to make R1 to suffer the physical and psychological ordeal of prosecution. The petition is highly misconceived and it is liable to be dismissed.

Point :

8. Now, I am setting forth the scope of controversy under different heads which are stated below.

Whether RW.1 cited any positive and dependable proof to show that he has house property and house site in his name?

9. In this controversial back drop, I feel it relevant to reproduce the averments made in para-4 of the petition. Para-4 goes on disclose that ***“This respondent further submits that he has got house property and another house site property in his name”***

Aver and prove is the cardinal principle of laws evidence. The evidence is instruments through which the court gets satisfied with respect to the existence or non-existence of the fact-in-issue. In the case on hand, RW.1 did not produce any cogent and convincing proof to show that he is born with gold spoon. If indeed RW.1 has any properties, surely, he would have mentioned in the counter, the details of properties and their location. Therefore, in the absence of any link and indispensable evidence, I hold that the plea propounded by the respondent is palpably false and no iota of truth in it.

Whether the intention of R1 in alienating the petition schedule property in favour of his wife i.e., R.2 covered under Ex.P3 gift deed dated 18.01.2022 is honourable or he entertained criminal desire to defeat or delay the legitimate debt of the petitioner covered under Ex.P1 and P2, and if so, his case comes within the four corners of Section 53 of the Transfer of Property Act and Sections 6 and 9 of Provincial Insolvency Act.?

10. As noticed, in essence, it is the case of the RW1 that he alienated the petition schedule properties to his wife covered under Ex.P3 Gift deed.

Certain facts are incapable of direct proof and their existence can be inferred from the circumstances or from the proved facts or from the relevance or from the connection or from the coincidence. The presumptive evidence as well has higher probative value on par with the other modes of evidence. Admittedly, RW.1 is hale and hearty and he has no health issues. On the other hand, it is not his case that he is badly bed ridden. In such circumstances where is the compelling and impelling necessity for RW.1 to transfer the property in the name of his wife. In this regard, no impressive explanation is emanated from his side of RW.1. There is a old saying that the witnesses may tell lie, but the circumstances do not and they speak as it is. It appears that RW1 has been making hectic efforts to screen the petition schedule property from being sold in the execution of decree which is to be passed in favour of PW1. Anticipating the litigation, RW1 alienated the property in favour of his wife covered under Ex.P3 gift deed. Therefore, from these attended circumstances, the conclusion is irresistible that the transaction covered under Ex.P3 is a fraudulent transfer and it is hit by Section 53 the Transfer of Property Act.

11. In the result, this petition bears merit and accordingly, it is allowed by adjudicating the first respondent as an Insolvent. The period of discharge is one year from the date of this Order. The petitioner is at liberty to move an application after compliance of Sec.45 to 50 and 54-A of the Provincial Insolvency Act to annul the transfer of immovable property under Sec.53 and 54 or 4 of the Said Act. The petition schedule property is vested with the

receiver. The office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by Steno, corrected and pronounced by me in the open Court, this the 12th day of March, 2024)



Addl. Civil Judge (Senior Division),
Tenali

Appendix of Evidence
Witnesses Examined

For Petitioner:

P.W.1 -Kanneganti Suseela Devi
PW2 - Juturi Lakshmi Naveen Pallav
PW3 - Kosaraju Siva Sankara Rao

For Respondents:

None

Exhibits Marked

For Petitioner:

Ex.P1 is original 'A' marked pronote executed by the 1st respondent in favour of PW1 for Rs.1,00,000/- dated 22.07.2019.

Ex.P2 is original 'B' marked pronote executed by the 1st respondent in favour of PW1 for Rs.1,00,000/- dated 14.08.2019.

Ex.P3 is extract copy of registered gift deed dated 18.01.2022 bearing Doc.No.214/2022 executed by 1st respondent in favour of the 2nd respondent for the petition schedule property.

Ex.P4 is office copy of registered post legal notice dated 09.04.2022 got issued through PW1's advocate to the 1st and 2nd respondents along with postal receipt.

Ex.P5 is postal acknowledgment of R1.

Ex.P6 is postal acknowledgment of R2.

For Respondents:

Nil

SHAIK ABDUL SHARIFF,

*Additional Civil Judge (Senior Division),
Tenali.*

[Dis.No.347.]

SCHEDULE

Item-1 : Guntur District, Tenali Sub Dist., Tenali Mandal, Burriapalem Village Panchayath, Burripalem Village D.No. 247/2A, out of an extent of Ac. 1.75 cents, an extent of 256.52 sq.yards of property is bounded by –

East : Property belongs to Chandu Sambaiah 90 links

South : Galli Bazar 61 links

West : Property belongs to Chandu Subba Rao and others 90 links

North : Property belongs to Gona Sankara Rao to some extent, boundary of 2nd item to some extent 58 links

With in these boundaries, an extent of 256.52 sq.yards or 214.47 sq. Meters residential site and RCC Godown of extent 1000 Sq.ft. there in.

Item-2 : Guntur District, Tenali Sub Dist., Tenali Mandal, Burriapalem Village Panchayath, Burripalem Village D.No. 247/2A, out of an extent of Ac. 1.75 cents, an extent of 24.2 sq.yards of vacant residential site is bounded by –

East : Property belongs to Shaik Meera Saheb 78 links

South : Boundary of item-1 13 links

West : Property belongs to Gona Sankara Rao 78 links

North : Road from Tenali to Ananthavaram 13 links

With in these boundaries, out of an joint extent of 48.4 sq.yards, right on half of it i.e., 24.2 Sq.yds or 20.03 sq.meters vacant residential site only.

Tenali
09 -04-2022

Advocate

Attached to decree

